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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,058	04/13/2004	Peter Thir		3971

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St. Leonard, MD 20685

EXAMINER	
MAI, HUY KIM	

ART UNIT	PAPER NUMBER
2873	

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/823,058	THIR, PETER	
	Examiner	Art Unit	
	Huy K. Mai	2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 April 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *6 and 8* is/are allowed.

6)☒ Claim(s) *1-5 and 7* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *13 April 2004* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *4/13/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The Information Disclosure Statement filed on April 13, 2004 is acknowledged.

Oath/Declaration

2. The declaration filed on April 13, 2004 is acceptable.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitations "said upper reflecting element and said lower reflecting elements may be positioned by physically bending said frame" and "physically bending the mounting point between any of said reflecting elements and said frame" in claim 2 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the

drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "9" has been used to designate both the ear piece (Fig. 1) and the corrective lenses (Fig. 3A). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

5. The disclosure is objected to because of the following informalities: The specification does not describe Figs. 1-2. The phrase "one or two Lower Reflectors (4) mounted to an Upper Reflector Frame (5)" (page 7, lines 10-11) should read --one or two Upper Reflectors (5) mounted to an Upper Reflector Frame (4)--. The phrase "an AR Reflector (13) affixed to the interior of a Tubular Frame (12)" (page 8, lines 17-18) should read --an AR Reflector (15) affixed to the interior of a Tubular Frame (13).

Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 2, 3 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "the mounting point" (claim 2, line 3) has no antecedent basis. The features "the openings" (claim 3, line 2) and "the leading edge" (claim 7, line 6) are undefined clearly.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1,2 are rejected under 35 U.S.C. 102(b) as being anticipated by Primeau (3,058,392).

The limitations in claims 1-2 are shown in Primeau's Figs. 1-2, columns 2-3. Primeau discloses a vision correcting device comprising: a frame 10, an upper reflecting element 24 permanently affixed to said frame, and one lower reflecting element 32 permanently affixed to said frame.

10. Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by Badgley (5,100,328) or Lee et al (5,173,720).

Badgley and Lee et al a vision correcting device comprising: a frame 24, an upper reflecting element 38 (see column 3, line 50), and one or two lower reflecting elements 32 mounted to a rigid frame in such a manner that the lower reflecting elements are held in a coplanar orientation.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Primeau.

Absence in showing the new or unobvious results and the reasons why the reflecting elements lie within the opening of the frame, it would have been an obvious engineering choice to form such the reflecting elements lie within the opening of the frame.

13. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al in view of Min (5,900,921).

Lee et al discloses the claimed invention as discussed above, but does not disclose shields positioned in such a manner as to prevent ancillary light from entering the eye from sources other than that reflected by the reflecting elements. It is commonly known in the art that using side shields for preventing the ancillary light from entering the user's eyes such as taught by Min, for example. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the Lee et al's device by forming shields positioned in the device in such a manner as to prevent ancillary light from entering the eye a manner as common knowledge in the art for the purpose recognized in the art of Lee et al, as discussed above.

Allowable Subject Matter

14. Claims 6 and 8 are allowed.

15. Claim 7 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy Mai whose telephone number is (571) 272-2334. The examiner can normally be reached on M-F (8:00 a.m.-4:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Y. Epps can be reached on (571) 272-2328. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1562.

Huy Mai
Primary Examiner
Art Unit 2873

HKM/
December 13, 2004